



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/788,059	02/16/2001	David Frederick Bantz	Y0R920000804US1	5389

7590 09/18/2003

Duke W. Yee
Carstens, Yee & Cahoon, LLP
P.O. Box 802334
Dallas, TX 75380

[REDACTED] EXAMINER

ELISCA, PIERRE E

[REDACTED] ART UNIT

[REDACTED] PAPER NUMBER

3621

DATE MAILED: 09/18/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No. 09/788,059	Applicant(s) David Frederick Bantz et al.
Examiner Pierre E. Elisca	Art Unit 3621

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE THREE MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 08/27/2003.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

4) Claim(s) 1-33 is/are pending in the application.

4a) Of the above, claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) _____ is/are allowed.

6) Claim(s) 1-33 is/are rejected.

7) Claim(s) _____ is/are objected to.

8) Claims _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) The proposed drawing correction filed on _____ is: a) approved b) disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. _____.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

*See the attached detailed Office action for a list of the certified copies not received.

14) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).

a) The translation of the foreign language provisional application has been received.

15) Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) Notice of References Cited (PTO-892)

4) Interview Summary (PTO-413) Paper No(s). _____

2) Notice of Draftsperson's Patent Drawing Review (PTO-948)

5) Notice of Informal Patent Application (PTO-152)

3) Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____

6) Other: _____

Art Unit: 3621



Examiner Pierre Eddy Elisca
United States Department of Commerce
Patent and Trademark Office
Washington, D.C. 20231

DETAILED ACTION

1. This Office action is in response to Applicant's amendment, filed on 08/27/2003.
2. Claims 1-33 are pending.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-33 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fader et al.(U.S. Pat. No. 6,519,570) in view of Baldwin et al. (6,310,952).

Art Unit: 3621

As per claims 1, 3, 7-9, and 11 Fader substantially discloses a system/method of conducting a time-auction among queuing customers. A bid is received from one of the queuing customers and compared with the prices being offered by the other customers waiting in line. The queuing showing a user's updated position in the queue due to having bid a higher rate to receive services from the information provider (which is readable as Applicant's claimed invention wherein it is stated that a method of providing service provider information to a client device in a distributed computer system) comprising:

obtaining at least bids from a plurality of service providers (plurality of service providers or bids receive from one of the queuing customers) for providing a service (see., abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that the customer is billed at the highest bid price for the services received from the service provider. Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, col 6, lines 47-64, plurality of bids); providing the bids from the plurality of service providers (abstract, col 6, lines 47-64, Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, col 6, lines 47-64, plurality of bids).

It is to be noted that Fader fails to explicitly disclose an estimated time (or travel) completion for the service. However, Baldwin discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated

Art Unit: 3621

amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader by including the limitation detailed above because such modification would provide automated access to service providers based upon an estimated amount of time.

As per claim 2, Fader discloses the claimed method of determining a service provider rating for each of the plurality of service providers; and providing the service provider rating for each of the plurality of service providers to the client or customers device (see., col 1, lines 47-52, col 5, lines 12-19).

As per claim 4, Fader discloses the claimed method wherein the at least one bid includes a price for providing the service (see., abstract, specifically wherein it is stated that a bid is received from one of the queuing customers and compared with the prices being offered by the other customers).

As per claim 5, Fader discloses the claimed method as stated in claims 1 and 4 above. It is to be noted that Fader fails to explicitly disclose an estimated time (or travel) completion for the service. However, Baldwin discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information

Art Unit: 3621

such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader by including the limitation detail above because such modification would provide automated access to service providers based upon an estimated amount of time.

As per claim 6, Fader discloses the claimed method as stated in claim 1 above, including obtaining route information from a route determination provider based on a first location and a second location (see., Figs 1 and 2, col 3, lines 10-37, please note that the role of a service provider is to route information from a first location to a second location. It is to be noted that Fader fails to explicitly disclose an estimated time (or travel) completion for the service. However, Baldwin discloses a method/system for providing easy access to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid, for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader by including the limitation detail above because such modification would provide automated access to service providers based upon an estimated amount of time.

Art Unit: 3621

As per claim 10, Baldwin discloses the claimed method wherein the electronic marketplace provider is present on a proxy server or queuing system 16 (see., see., Fig 1, col 3, lines 21-67, col 4, lines 1-15, please note that the proxy server is readable as the queuing system 16 since it provides user's identification, such as caller's or user's name, address, and phone number).

As per claims 12, 16-20, 22, 23, 25, 27-31, and 33 Fader substantially discloses apparatus of conducting a time-auction among queuing customers. A bid is received from one of the queuing customers and compared with the prices being offered by the other customers waiting in line. The queuing showing a user's updated position in the queue due to having bid a higher rate to receive services from the information provider (which is readable as Applicant's claimed invention wherein it is stated that an apparatus of providing service provider information to a client device in a distributed computer system) comprising:

a first interface or first instructions (see., Fader, figs 1 and 2, customer computers interface with network 500 and service provider computers 200 interface with network 500) which obtains at least bids from a plurality of service providers (plurality of service providers or bids receive from one of the queuing customers) for providing a service (see., abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that the customer is billed at the highest bid price for the services received from the service provider. Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers);

Art Unit: 3621

a second interface or second instructions (see., Faber, figs 1 and 2) which provides the bids from the plurality of service providers (abstract, col 6, lines 47-64. Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, col 6, lines 47-64, plurality of bids). It is obvious to recognize that the role of a service provider is to route information from a first location to a second location. It is to be noted that Fader fails to explicitly disclose an estimated time completion or calculating an estimated time for the service. However, Baldwin discloses a method/system for providing easy access or third instructions to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid , for a queue (see., Baldwin, col 4, lines 33-61). Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader by including the limitation detailed above because such modification would provide automated access to service providers based upon an estimated amount of time.

As per claim 13, Fader discloses the claimed limitations wherein the processor determines a service provider rating for each of the plurality of service providers and the second interface provides the service provider rating for each of the plurality of service providers to the client device or customer (see., col 1, lines 47-52, col 5, lines 12-19).

Art Unit: 3621

As per claim 14, Fader discloses the claimed limitations wherein a third interface (see., Figs 1 and 2, customer computers interface with network 500 and service provider computers 200 interface with network 500) which receives a selection of a selected service provider from the plurality of service providers and a command to place an order for the service with the selected service provider; and a fourth interface which places an order with the selected service provider (see., Figs 1 and 2, customer computers interface with network 500 and service provider computers 200 interface with network 500, please note that customer or client computers 100 are for placing order or bids, col 3, lines 10-67, col 4, lines 1-57).

As per claims 15, 26, Fader discloses the claimed limitations wherein the at least one bid includes a price for providing the service (see., abstract, specifically wherein it is stated that a bid is received from one of the queuing customers and compared with the prices being offered by the other customers).

As per claim 21, Baldwin discloses the claimed limitations wherein the electronic marketplace provider is present on a proxy server or queuing system 16 (see., see., Fig 1, col 3, lines 21-67, col 4, lines 1-15, please note that the proxy server is readable as the queuing system 16 since it provides user's identification, such as caller's or user's name, address, and phone number).

Art Unit: 3621

As per claim 24, Fader discloses the claimed limitations of determining a service provider rating or fourth instructions for each of the plurality of service providers; and providing the service provider rating or fifth instructions for each of the plurality of service providers to the client or customers device (see., col 1, lines 47-52, col 5, lines 12-19).

As per claim 32, Fader discloses the claimed limitations wherein the electronic marketplace provider is present on a proxy server or queuing system 16 (see., see., Fig 1, col 3, lines 21-67, col 4, lines 1-15, please note that the proxy server is readable as the queuing system 16 since it provides user's identification, such as caller's or user's name, address, and phone number).

RESPONSE TO ARGUMENTS

5. Applicant's arguments filed on 08/27/2003 have been fully considered but they are not persuasive.

REMARKS

6. In response to Applicant's arguments, Applicant argues that the prior art of record taken alone or in combination fail to disclose:

a. "obtaining bids from a plurality of service providers for providing a service". As stated above, Fader discloses this limitation in the abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that the customer is billed at the highest bid price for the services received from

Art Unit: 3621

the service provider. Applicant's newly added limitation wherein said plurality of service providers is disclosed in the abstract, specifically wherein it is stated that the system/method allow vendors such as service providers, and col 6, lines 47-64, plurality of bids).

b. "an estimated time of completion of the service for each of the plurality of service providers". However, the Examiner respectfully disagrees because Baldwin discloses a method/system for providing easy access or third instructions to a service provider that provides service over a communications system. A queue 27 informs a caller of an estimated amount of time before the caller will reach the top of the queue. A set of information includes information such as the name of the caller, the amount of money the caller is willing to pay, or bid , for a queue (see., Baldwin, col 4, lines 33-61, please note that estimated time of completion is readable as when the queue 27 informs the caller or user of an estimated amount of time before completing the call or bid. Therefore, it would have been obvious to a person of ordinary skill in the art at the time the invention was made to modify the time-auction of Fader by including the limitation detailed above because such modification would provide automated access to service providers based upon an estimated amount of time.

c. "Selection of a service provider". As noted above, Fader discloses in Figs 1 and 2 a plurality of service providers, and therefore, it is obvious to recognize that the selection of a service provider would depend on the availability of the service providers.

d. "Obtaining bids from a plurality of service providers". As stated above, Fader discloses a plurality of service providers **or** bids receive from one of the queuing customers for providing a service (see., abstract, col 2, lines 36-39, fig 5, col 6, lines 47-64, specifically wherein it is stated that a bid is

Art Unit: 3621

received from one of the queuing customers and compared with the prices being offered by the other customers waiting in line).

e. "Routing information from a route provider". It is obvious to recognize that the role of a service provider such as service provider 200, Figs 1 and 2 of Fader is to route information from a first location to a second location.

f. Applicant also maintains that Fader and Baldwin cannot be combined, the Examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

The rationale to modify or combine the prior art does not have to be expressly stated in the prior art; the rationale may be expressly or impliedly contained in the prior art or it may be reasoned from knowledge generally available to one of ordinary skill in the art, established scientific principles, or legal precedent established by prior case law. *In re Fine*, 837 F.2d 1071, 5USPQ2d 1596 (Fed. Cir. 1988); *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). See also *In re Eli Lilli & Co.*, 902 F.2d 943, 14 USPQ2d 1741 (Fed. Cir. 1990) (discussion of reliance on legal precedent); *In re Nilssen*, 851 F.2d 1401, 7USPQ2d 1500 (Fed. Cir. 1988) (references do not have to explicitly suggest combining teachings); *Ex parte Clapp*, 227 USPQ 972 (Bd. Pat. App & Inter); and *Ex parte*

Art Unit: 3621

Levengood, 28 USPQ2d 1300 (Bd. Pat. App. & Inter. 1993) (reliance on logic and sound scientific reasoning).

Also in reference to Ex parte Levengood, 28 USPQ2d, 1301, the court stated that “Obviousness is a legal conclusion, the determination of which is a question of patent law.

Motivation for combining the teachings of the various references need not to explicitly found in the reference themselves, In re Keller, 642 F.2d 413, 208USPQ 871 (CCPA 1981). Indeed, the Examiner may provide an explanation based on logic and sound scientific reasoning that will support a holding of obviousness. In re Soli, 317 F.2d 941 137 USPQ 797 (CCPA 1963).”

CONCLUSION

7. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136 (a).

A shorted statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within two months of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136 (a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3621

Conclusion

4. Any inquiry concerning this communication from the examiner should be directed to Pierre Eddy Elisca at (703) 305-3987. The examiner can normally be reached on Tuesday to Friday from 6:30AM. to 5:00PM.

If any attempt to reach the examiner by telephone is unsuccessful, the examiner's supervisor, James Trammell can be reached on (703) 305-9768.

Any response to this action should be mailed to:

Commissioner of patents and Trademarks

Washington, D.C. 20231

The Official Fax Number For TC-3600 is:

(703) 305-7687



Pierre Eddy Elisca

Patent Examiner

September 10, 2003